

09533906-030800

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Attorneys for Plaintiff
GEN-PROBE INCORPORATED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

GEN-PROBE INCORPORATED,

Plaintiff,

v.

VYSIS, INC.,

Defendant.

No. 99CV2668 H (AJB)

NOTICE OF MOTION AND MOTION OF GEN-
PROBE INCORPORATED FOR LEAVE TO FILE
SECOND AMENDED COMPLAINT

Date: February 20, 2001
Time: 10:30 a.m.
Dept.: Courtroom 1

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

PLEASE TAKE NOTICE that on February 20, 2001 at 10:30 a.m. in Courtroom 1 of the
above entitled court located at the United States Courthouse, 940 Front Street, San Diego,
California 92101, plaintiff Gen-Probe Incorporated ("Gen-Probe") will and hereby does move the
Court for an Order under Federal Rule of Civil Procedure, Rule 15 for leave to file a Second

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1 Amended Complaint, the proposed form of which is attached as Exhibit 7 to the accompanying
2 Declaration of Stephen P. Swinton.

3 By its proposed Second Amended Complaint, Gen-Probe seeks to add new counts for
4 unenforceability due to inequitable conduct and prosecution laches. Gen-Probe has recently
5 confirmed the facts that support these claims. Gen-Probe's motion is timely and made in good
6 faith. Moreover, the proposed amendments will not cause Vysis to suffer prejudice and are not
7 futile.


8 This Motion is based on this Notice of Motion and Motion, the accompanying
9 Memorandum of Points and Authorities, the Declaration of Stephen P. Swinton, the Notice of
10 Lodgment, and on such other and further oral and documentary evidence as the Court may
11 consider at the time of the hearing.

12 Dated: January 19, 2001

13 STEPHEN P. SWINTON
14 COOLEY GODWARD LLP

15 DOUGLAS E. OLSON
16 BROBECK PHLEGER & HARRISON LLP

17 R. WILLIAM BOWEN, JR.
18 GEN-PROBE INCORPORATED

19 By: 
20 Stephen P. Swinton

21 Attorneys for Plaintiff
22 GEN-PROBE INCORPORATED